

## HOG PROCUREMENT AGREEMENT

THIS HOG PROCUREMENT AGREEMENT ("Agreement") is dated as of \_\_\_\_\_, 199\_\_\_\_, between IBP, inc., ("IBP") a Delaware corporation, [REDACTED]

[REDACTED] ("Producer") [REDACTED] IBP, as of the date of this Agreement, owns and operates hog processing plants in Nebraska, Iowa and Indiana; Producer feeds hogs and/or has hogs contracted for production both in its own facilities and/or in facilities owned by others; and IBP wishes to buy such hogs and Producer wishes to sell such hogs for processing at IBP's facilities on the following terms and conditions:

### Section 1. Term

The term ("Term") of this Agreement shall commence on \_\_\_\_\_ and end on \_\_\_\_\_, unless amended or terminated pursuant to the terms of this Agreement.

### Section 2. Delivery and Schedule of Shipments

(a) Producer agrees to sell, and IBP agrees to purchase, Producers market hogs, as defined in attached Schedule 2, ("Market Hogs"). During the Term, Producer will deliver on an annual basis the following number of Market Hogs ("Annual Total Production"):

<u>Annual Period</u>	<u>Market Hog #s</u>
1998	2000
1999-2002	8000
2003	1000

In the event Producer expands its operation, or if the Producer is delivering all of its Market Hogs and the number of Market Hogs Producer wishes to deliver under this Agreement exceeds the Annual Total Production (as estimated) by more than 15%, Producer must notify IBP in writing of such increase in production, and IBP at its sole discretion may choose to accept the additional Market Hog production under the term of this Agreement. IBP will notify Producer of such decision in writing.

(b) If Producer's Annual Total Production to be delivered to IBP is less than 7500 Market Hogs, Producer will provide IBP on November first of each year the approximate number of hogs to be delivered on a quarterly basis for the following year (i.e. on November 1, 2001, Producer will provide the number of Market Hogs to be

delivered in each quarter of 2002). If the Annual Total Production equals or exceeds 7500, Producer will provide IBP on November first of each year the approximate number of hogs to be delivered on a monthly basis for the next year. Producer will use his best efforts to deliver to IBP the Annual Total Production of Market Hogs on an even and consistent basis over each year of the Term (i.e. if Producer is to deliver 4,000 head per year, approximately 1,000 head should be delivered per quarter; or if 9,000 head are to be delivered per year, approximately 750 head should be delivered per month). If the Producer's delivery estimates change, the Producer shall update the estimates immediately and deliver the new estimate to IBP.

(c) Producer agrees to arrange and schedule with a designated IBP representative Market Hog deliveries to either of IBP's two nearest operational plants (excluding the Perry, IA facility unless Producer is an approved supplier for Nippon). IBP will use good faith efforts to arrange delivery to the nearest plant when possible. Producer will notify IBP that Market Hogs are ready for delivery no later than, Thursday of the week prior to the week of delivery. By Friday of the week preceding delivery, IBP will schedule and notify Producer of the day of the week and the time of day which Market Hogs should be delivered to the designated IBP facility. IBP and Producer will work together to create reasonable schedules for the delivery of Market Hogs. Changes in that schedule will be permitted only by agreement between IBP and Producer reached at least twenty-four (24) hours prior to delivery, or unless agreed to otherwise in this Agreement. Other IBP plants may be added as delivery points for Market Hogs as mutually agreed to by the parties.

(d) Inspection, sorting and weighing shall be performed by IBP at the plant specified by IBP for delivery. No hogs shall be accepted to fulfill the terms of this Agreement if they do not meet the specifications of a Market Hog.

(e) Title and risk of loss on the Market Hogs will pass from Producer to IBP upon the slaughter of the Market Hogs at IBP's plant, however, Producer will remain responsible for any carcasses that contain drug residue or are adulterated in any other manner which is due to Producer.

(f) Producer and IBP shall immediately notify and consult with each other concerning any temporary inability to take or deliver Market Hogs.

(g) IBP shall have a right of first refusal to any bid Producer has received for sows, boars and off quality hogs being sold for slaughter.

### Section 3. Verification of Hog Quantity and Quality

(a) It is mutually understood between IBP and Producer that Producer will produce Market Hogs with carcasses that will equal or exceed the average of all carcasses from Market Hogs delivered to IBP based on the existing carcass evaluation system at the time of delivery. Producer will use genetics to produce Market Hogs that

on average will have a meat quality (which includes firmness, water holding capacity, marbling and color determined by a Minolta reading 49.4 or less) that equals or exceeds the meat quality of all other hogs delivered to IBP for slaughter.

(b) Producer agrees to use for Market Hog production a nutritional program that will produce carcasses that equal or exceed the average carcass characteristics, as defined by the carcass evaluation program at the time of delivery, of all carcasses delivered to IBP by all producers IBP buys from.

(c) Producer will permit IBP a reasonable number of scheduled visits to Producer's facilities during normal operating hours to observe and monitor production and quality. Prior notice shall be given to Producer, and such visits will not unreasonably interfere with the operation of such facilities. Producer agrees to provide IBP on request information relating to its production management practices.

#### Section 4. Price

(a) The price paid by IBP for each lot of Market Hogs delivered by Producer and accepted by IBP under this agreement shall be the price per hundred weight ("cwt") in accordance with this section.

(b) For the Term, the price will be calculated on the Carcass Merit Program under IBP's VMR Agreement in effect at the time of delivery. As of the date of this Agreement, the price for each lot is determined by using the 3-day simple rolling average of the USDA Western Cornbelt Lean Value opening report (released at approximately 11:00 a.m. C.D.T.), average of the low and high carcass cwt price of the 1.00" - 1.19" ranges measured at the midline last rib backfat of the 170 - 191 lb. carcass range for the three days prior to slaughter ("Base Meat Price") and adding or subtracting from the Base Meat Price, IBP's grade premiums and discounts, weight discounts, and other adjustments in effect at the time of slaughter to determine the market price ("Market Price"). IBP's VMR may be changed by IBP on a quarterly basis. Carcass weight prices (for the Base Meat Price and other prices using carcass price) will be converted to live prices by IBP.

(c) When the Market Price (converted from a carcass to a live price) is less than the Floor Price, as defined in Schedule 4(c), the Floor Price shall be paid to Producer. When the Market Price is less than the Floor Price, the difference between the Market Price and the Floor Price, multiplied by the total live weight (expressed in cwt) of that lot, the "Deficiency Amount", shall be drawn from the Reserve Account (defined below) if the Reserve Account has a positive balance. When the Reserve Account balance has been reduced to zero, then the Deficiency Amount shall be accrued in the Deficiency Account (defined below) pursuant to Section 5.

#### Section 5. Pricing Adjustments

(a) Subject to the limitations of this Section, when the Market Price exceeds the Floor Price by \$5.00/cwt live, and when there is no balance in the Deficiency Account (defined below), IBP will deduct 5% of the Market Price ("Reserve Account") from Producer's check and deposit the Reserve Amount into an account maintained by IBP for Producer ("Reserve Account").

(i) The Reserve Account will be paid interest by IBP at the prime rate, as reported in the Wall Street Journal less one percent ("Interest Rate") during the Term of this Agreement.

(ii) When there is a balance in the Reserve Account, interest will accrue at the Interest Rate, which will be adjusted quarterly and compounded on a quarterly basis on the first day of each quarter, and will be added to the Reserve Account balance.

(iii) At the end of the Term of the Agreement, any amount, with interest, that has accrued in the Reserve Account shall be repaid by IBP to Producer within 10 days of termination.

(iv) IBP agrees to maintain records relating to the Reserve Account, and upon Producer's reasonable requests IBP shall furnish copies of such records to Producer or extracts therefrom.

(v) The maximum balance (not including interest) that Producer will maintain in the Reserve Account is \$20,000.00. When the \$20,000.00 is attained, then the Reserve Amount deduction pursuant to this Section will not apply until the Reserve Account is reduced to less than \$20,000.00. The Reserve Amount is determined by multiplying \$5/head times the highest number of head per year as shown in Section 2(a), at the end of each year IBP will increase the maximum balance by multiplying \$5/head times the actual number of head delivered in such year.

(a) When there are Deficiency Amounts, and when the Reserve Account has a zero balance, such Deficiency Amounts will be accounted for by IBP in an account maintained by IBP for Producer to accrue Deficiency Amounts ("Deficiency Account") as follows:

(i) The Deficiency Account will be charged interest at the Interest Rate during the Term of this Agreement.

(ii) The Deficiency Account will be the Producer's sole responsibility to repay pursuant to Section 6. When there is a balance in the Deficiency Account, interest will accrue at the Interest Rate, which will be adjusted quarterly and compounded on a quarterly basis on the first day of each quarter, and will be added

to the Deficiency Account balance owed to IBP, unless provided for otherwise.

(iii) At the end of the Term of the Agreement, or immediately upon any termination pursuant to Section 8, any amount, with interest, that has accrued in the Deficiency Account shall be repaid to IBP by Producer within 10 days of termination. If Producer does not want to immediately repay IBP at the end of the Term, Producer may request to continue deliveries of Market Hogs to IBP until the Deficiency Account is repaid according to Section 6. Upon IBP's written approval (which approval shall be solely at IBP's discretion), Producer may continue to deliver the Annual Total Production of Market Hogs after the Term to pay the Deficiency Accounts until the balance is reduced to zero. If IBP and Producer agree to continue deliveries after the end of the Term, the Deficiency Account balance cannot be increased and if the Market Price drops below the Floor Price the Market Price will be paid.

(iv) IBP agrees to maintain records relating to the Deficiency Account and upon Producer reasonable requests, IBP shall furnish copies of such records to Producer or extracts therefrom.

#### Section 6. Repayment Schedule

If the Deficiency Account has a positive balance, deductions will be made from Producer checks for Market Hogs when the Market Price (converted to a live price) exceeds the Floor Price. All amounts which exceed the Floor Price shall be subtracted from Producer's check and applied to the Deficiency Account balance until the Deficiency Account is reduced to zero. If there is no Deficiency Account balance, then the Market Price will be paid to Producer subject to Reserve Amount deductions pursuant to Section 5.

#### Section 7. Payment

IBP shall pay Producer in full for Market Hogs by check delivered by U.S. Mail, pursuant to the U.S.D.A. Packer and Stockyard's regulations.

#### Section 8. Default

(a) Producer Default. For the purposes of this Agreement, a default by Producer shall be deemed to have occurred under any of the following circumstances:

(i) Producer defaults in the performance of any material obligation under this Agreement and fails to cure such default within thirty (30) days following receipt of written notification of such default from IBP;

(ii) Producer is adjudged as bankrupt, or if a proceeding of any kind under any law relating to bankruptcy, insolvency or relief of debtors is initiated by or against Producer and is not dismissed within thirty (30) days;

(iii) Producer makes an assignment for the benefit of its creditors, or ceases to carry on its business;

(iv) Producer has a receiver, trustee or similar person appointed or otherwise designated in respect to its business or affairs; or

In the event of a default by Producer, IBP, in addition to all of its other rights and remedies under applicable law may terminate this Agreement by providing written notice to Producer. The termination shall be complete upon the receipt of notice by Producer.

(b) **IBP Default.** For the purposes of this Agreement, a default by IBP shall be deemed to have occurred under any of the following circumstances:

(i) IBP defaults in the performance of any material obligation under this Agreement and fails to cure such default within (30) days following receipt of written notification of such default from Producer;

(ii) IBP is adjudged as bankrupt, voluntarily files for bankruptcy, or if a proceeding of any kind under any law relating to bankruptcy, insolvency or relief of debtors is initiated by or against IBP and is not dismissed within thirty (30) days;

(iii) IBP makes an assignment for the benefit of its creditors, or ceases to carry on its business;

(iv) IBP has a receiver/trustee or similar person appointed or otherwise designated in respect to its business or affairs; or

In the event of an IBP Default, Producer, in addition to all of its other rights and remedies under applicable law may terminate this Agreement by providing written notice to IBP. The termination shall be complete upon receipt of notice by IBP.

(c) **Effect of Termination.** Termination of this Agreement shall not relieve any party of any liability accrued for, nor effect the continued operation or enforcement of any provision of this Agreement which by its terms is to survive termination. Nothing herein shall prevent any party from seeking specific performance or damages for breach in respect of any right or obligation from paying the other party for any amounts due. The rights and remedies set forth in this subsection are non-exclusive and shall be in addition to any other rights or remedies set forth in this subsection are

non-exclusive and shall be in addition to any other rights or remedies that may otherwise be available at law or equity.

#### Section 9. Force Majeure

(a) Neither party shall be liable for failure to perform or delay in performing any act hereunder if such performance is rendered impossible by reason or matters beyond the reasonable control of the party, including but not limited to acts of God, governmental action, strikes, lockouts, picketing, wars, blockades, riots, disease, epidemics, fire, storms, floods, explosion, or Producer's death or permanent disability (if an individual). A failure to settle or prevent any strike or controversy with employees or with anyone purporting or seeking to represent employees shall be considered a matter beyond the reasonable control of the party affected under this subsection, provided such strike affects said party's performance of the requirements of this Agreement. Once performance becomes commercially possible, the responsibilities and obligations of the parties shall resume again with full force and effect. IBP agrees that in the event of a Force Majeure event affecting its plant(s) specified for delivery it will use reasonable efforts to assist Producer in rescheduling the Market Hogs at other IBP plants.

(b) If a Force Majeure event shall continue for a period longer than six months, the party not claiming Force Majeure may terminate this Agreement by giving the other party written notice.

#### Section 10. Notices

All notices required or permitted to be given hereunder, unless otherwise specified, shall be in writing and shall be deemed properly given when delivered in person, by courier service, costs prepaid, or when sent by facsimile, to the party to be notified, as its address set forth below, or such other address as the party to be notified may have designated prior thereto by written notice to the other:

Producer:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

IBP:

IBP, inc.  
P. O. Box 515  
IBP Avenue  
Dakota City, NE 68731  
Attention: Vice President, Pork Procurement

#### Section 11. Forward Contract Deliveries

Any Market Hogs delivered by Producer under an IBP Carcass Hog Contract (also known as the CME forward contract) will be counted as part of Producer's Annual Total Production commitment in Section 2, however, the Producer will not have any Floor Price guarantee or Deficiency Account protection and Reserve Accounts will not be deducted. The Producer will receive the forward contract price for Market Hog deliveries under the forward contract which exceeds the amounts that would be received using the Floor Price at the time of delivery, will be deducted from Producer's check and applied to the Deficiency Account until such account has a zero balance.

#### Section 12. Waivers

Failure of IBP or Producer to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any right or remedies provided herein, or by law, or to properly notify either party in the event of a breach or the acceptance of payment for any goods hereunder, shall not release either party from any of the warranties or obligations of this Agreement, and shall not be deemed a waiver of any right by either party to insist upon strict performance hereof, or any of its rights or remedies regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification operate as a waiver or any of the Agreement terms.

#### Section 13. Assignment

If Producer sells or leases the facilities used to produce Market Hogs, this Agreement must be assigned to the purchaser or lessee of the facilities. Such assignment, and all other assignments shall not be made by either party without first receiving the other party's written consent, which consent will not unreasonably be withheld.

#### Section 14. Representation of Producer

Producer will, at all times during the Term and any renewed or extended term hereof, be supervised by a licensed veterinarian and will properly use any applicable drugs and adhere to the required withdrawal procedures. Producer must be on the Pork Quality Assurance Program and must be at Level III of the Pork Quality Assurance Program. If the National Pork Producer Council, or its predecessors, creates a level higher than Level III, Producer will attain such higher level within a reasonable period of time.

#### Section 15. Representation of IBP

IBP shall keep all necessary records with respect to the receipt, weighing, and payment of all livestock in accordance with its regular record retention and destruction schedule. Producer may inspect such records during the normal business hours at locations designated by IBP on reasonable notice by Producer to IBP. IBP shall supply copies of such records as Producer may reasonably request at Producer's expense.



#### Section 16. Producer Financials

Producer must at all times be able to demonstrate its financial soundness to IBP and to provide evidence thereof upon the request of IBP. Producer agrees to execute and deliver to IBP from time to time, as requested by IBP in its discretion, such security agreements, financing statements under the Uniform Commercial Code and other instruments as may be necessary or appropriate to grant IBP a security interest in tangible assets and the liabilities of the Producer (net tangible assets) shall be sufficient to secure Producer's obligations to repay the Deficiency Account under this Agreement. Such security interest shall be on written terms reasonably satisfactory to IBP.

#### Section 17. Confidentiality

The parties acknowledge and agree that in connection with, or as a result of, this Agreement, each party may be furnishing the other party with certain information which is either non-public, confidential or proprietary in nature ("Confidential Information"). Each party's Confidential Information will be kept confidential by the other party and shall not, without prior written consent, be disclosed by the other party to any other person or entity or be used by the other party for any purpose other than in connection with this Agreement. This Agreement and its terms shall be considered the Confidential Information of IBP.

#### Section 18. Miscellaneous

(a) Producer and IBP shall use reasonable efforts to settle any dispute, claim, question, or disagreement arising out of, or relating to, this Agreement or any alleged breach of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

(b) IBP and Producer agree that the relationship between them is that of independent contractors. Nothing in this Agreement shall constitute either Producer or IBP as agent, representative, partner, joint venturer or employee of the other party. Neither Producer nor IBP shall have, nor shall either represent itself as having, any right, power or authority to create any agreement or obligations, either express or implied, on behalf of, in the name of, or binding upon the other party, or to pledge the other's credit or to extend credit in the other's name unless the other party shall provide advance written consent thereto.

(c) Producer acknowledges it has entered into this Agreement on its own accord and has adequate time to consult with its attorney and accountant as Producer has deemed necessary.

(d) Producer warrants that he has good and marketable title to all Market Hogs delivered to IBP's plant and has provided to IBP prior to delivery of the Market Hogs to IBP, the names and addresses of any person, corporation, partnership, or

other entity which has a lien interest in or on the Market Hogs, or, in the alternative, a lien release executed by such lienholder.

- (e) If IBP exits the hog processing business it may terminate this Agreement. Upon such termination any amounts in the Deficiency Account will be repaid by Producer within 60 days, any amounts in the Reserve Account will be repaid by IBP in 10 days, and their will be no further obligations by either party under this Agreement.

**Section 19. Agreement Does Not Guarantee a Profit**

**IBP makes no representations, warranties or guarantees of the profitability of this Agreement to Producer. Producer acknowledges and agrees that the production of Market Hogs is a speculative business and this Agreement does not guarantee any profits to Producer. Producer understands and agrees that at the end of the Term of this Agreement Producer is responsible for repaying any balance in the Deficiency Account to IBP pursuant to the terms of this Agreement.**

**Section 20. Non-Exclusivity**

This Agreement shall not be exclusive to Producer, but instead may be offered by IBP to other producers.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IBP, inc.

By: \_\_\_\_\_

Name: John Doe

Title: V.P. Pork Procurement

## Schedule 2

(i) All Market Hogs, to be considered deliverable pursuant to this Agreement, must meet IBP's existing weight specifications for all hogs purchased by IBP plants at time of delivery. Any Load of hogs or any hog sorted out at the time of delivery will be priced according to IBP's existing weight or quality discount schedule.

(ii) All qualifying Market Hogs shall be free of the following defects:

- a) Abscesses
- b) Scars
- c) Ruptures
- d) Uncastrated Males
- e) Freshly castrated
- f) Fresh cut or unhealed wound
- g) Any defect that would result in a downgrade of the animal's carcass.

All Market Hogs delivered under this Agreement will be purchased subject to passing inspection by the USDA with deductions in compensation for all carcasses or carcass parts that are condemned by USDA inspectors.

(iii) Market Hogs will meet all other quality characteristics defined in the Hog Procurement Agreement.

Schedule 2 may be amended by IBP giving Producer at least thirty (30) days prior written notice.

#### Schedule 4(c)

The Floor Price will be based on the eight (8) week rolling average of the daily Omaha processor corn price as reported by the USDA Market News Service, and on the eight week rolling average of the Decatur/Central Illinois 48% soybean meal prices as reported by the USDA Market News Service (the average weekly price for each will be determined by aggregating the sum of the mid point of the range of the closing prices quoted by the USDA Market News Service for all trading days within a week and dividing the sum by the number of trading days within that week). To determine the Floor Price the average corn price and soybean meal price equals \$190 then the Floor Price is \$48.25). The Floor Price will be calculated and published by IBP at the end of each of IBP's fiscal month. IBP will announce the monthly Floor Price on the first Monday after the end of its fiscal month, (or as soon as all information is available to make the calculation) based on the eight week period prior to each such Monday.

IBP may unilaterally amend or replace the Floor Price Matrix for reasons that include, but are not limited to the following: (1) the markets quoted for corn and soybean prices are no longer true and reliable indicators of such markets; (2) corn and soybean meal are no longer considered to be the major ingredients of high quality feed rations; (3) any changes in production management or other unforeseen circumstances which affect the Matrix; or (4) upon a review conducted by IBP, IBP determines that the matrix no longer accurately measures hog production cost and efficiencies.